



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Decision

Dispute Codes:

CNR, RP, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent dated January 19, 2011 and purporting to be effective January 29, 2011. The tenant's application also requested an order to force the landlord to do repairs and sought reimbursement by the landlord for the cost of the filing;

Both the landlord and the tenant appeared and each gave testimony in turn.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord's issuance of the Ten-Day Notice to End Tenancy for Unpaid was warranted. The questions to be answered include:
 - Did the tenant violate the Act by failing to pay rent when rent was due?
 - Did the tenant have a valid reason under the Act not to pay the rental amount in full?
 - Did the tenant pay the rent in full within 5 days of receiving the Notice to End Tenancy?

The burden of proof is on the landlord/respondent to justify the reason for the Ten-Day Notice.

Background and Evidence

Submitted into evidence was, a copy of the Ten-Day Notice to End Tenancy dated January 19, 2010. The respondent landlord had submitted a floor plan and affidavits from the landlord regarding the rent owed and the condition of the premises.

The landlord testified that the tenant did not pay rent for the month of January 2011 properly due on January 1, 2011 and that a Ten-Day Notice to End Tenancy was issued on January 6, 2009. The landlord testified that the rent was not paid within five days to cancel the notice and in fact was never paid at all. The landlord testified that the rent for February was also not paid and the landlord believed that the Notice was warranted and should not be cancelled.

The tenant acknowledged receiving the notice and did not dispute that the rent was not paid. However, the tenant testified that this was due to cheques missing from her mailbox. The tenant also testified that she was aware that a tenant is not entitled to withhold rent .

Analysis – Notice to End Tenancy

Section 26 of the Act states that rent must be paid when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or tenancy agreement. Given the testimony of the parties, I find that the tenant did not pay the rent when rent was due, did not pay the arrears within 5 days of receiving the Notice to end Tenancy for Unpaid Rent and the tenant did not have a valid reason under the Act not to pay the rent, even if the alleged violations of the Act by the landlord did occur.

Accordingly, I find I must dismiss the tenant's application for an order to cancel the Ten-Day Notice. During the hearing the landlord made a request for an order of possession. Under the provisions of section 55(1) of the Act, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy.

Conclusion

Based on the testimony and evidence above, I hereby issue an Order of Possession in favour of the landlord effective two days after service to the tenant. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court. The tenant's application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 2011.

Residential Tenancy Branch